

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JOSEPH SAUL STEWARD,

Plaintiff,

vs.

No. CIV 23-0570 JB/GJF

CURRY COUNTY DETENTION CENTER
and CHRISTOPHER MAYFIELD,

Defendants.

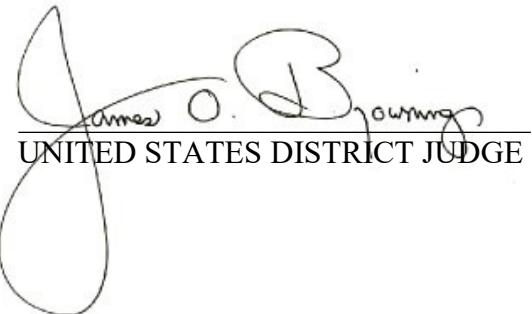
MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Plaintiff's Letter-Motion to Withdraw Complaint for Violation of Civil Rights (dated July 24, 2023), filed July 28, 2023 (Doc. 4) ("Motion to Withdraw"). Plaintiff Joseph Saul Steward initiated this case by filing a pro se Complaint for Violation of Civil Rights (Prisoner Complaint)(dated June 25, 2023), filed July 7, 2023 (Doc. 1) ("Complaint"). The Complaint brings a claim under 42 U.S.C. § 1983, alleging that a detention officer at the Curry County Detention Center in Clovis, New Mexico, engaged in "racial assault" and "racial aggression" against Steward. Complaint at 3. Along with the Complaint, Steward filed an Application to Proceed in District Court Without Prepaying Fees or Costs (dated June 25, 2023), filed July 7, 2023 (Doc. 2) ("IFP Motion").

On June 28, 2023, Steward filed the Motion to Withdraw. Steward reports that the detention officer has not been disrespectful since the incident discussed in the Complaint and is now polite. See Motion to Withdraw at 2. Having resolved the issue, Steward does not wish for Curry County Detention Center to "los[e] a good detention officer." Motion to Withdraw at 1. He therefore asks to "completely withdraw[] [his] [c]ivil [c]omplaint [l]awsuit[,] Case # 2:23-cv-00570 . . ." Motion to Withdraw at 3.

The Court construes the Motion to Withdraw as a request for voluntary dismissal under rule 41(a) of the Federal Rules of Civil Procedure. Rule 41(a) gives plaintiffs an absolute right to dismiss an action without prejudice “before the opposing party serves either an answer or a motion for summary judgment.” Fed. R. Civ. P. 41(a)(1)(A)(i). See Janssen v. Harris, 321 F.3d 998, 1000 (10th Cir. 2003)(noting that the right to dismiss under rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure is “absolute”). Defendants Curry County Detention Center and Christopher Mayfield have not entered an appearance in the case, or filed an answer or summary judgment motion. The Court therefore grants the Motion to Withdraw and permits Steward to voluntarily dismiss the Complaint without prejudice. The Court also denies as moot the IFP Motion.

IT IS ORDERED that: (i) the Plaintiff’s Letter-Motion to Withdraw Complaint for Violation of Civil Rights (dated July 24, 2023), filed July 28, 2023 (Doc. 4), is granted; (ii) the Plaintiff’s Complaint for Violation of Civil Rights (Prisoner Complaint)(dated June 25, 2023), filed July 7, 2023 (Doc. 1), is dismissed without prejudice; (iii) the Plaintiff’s Application to Proceed in District Court Without Prepaying Fees or Costs (dated June 25, 2023), filed July 7, 2023 (Doc. 2), is denied; and (iv) the Court will enter a separate Final Judgment.



UNITED STATES DISTRICT JUDGE

Parties:

Joseph Saul Steward
Clovis, New Mexico

Plaintiff pro se